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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,919	12/11/2001	Andrew B. Baker	18922-05648	9981
758	7590	11/30/2006	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			GREIMEL, JOCELYN	
			ART UNIT	PAPER NUMBER
			3693	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/014,919	BAKER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jocelyn Greimel	3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 December 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 11-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 11-36 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_.  
3)  Information Disclosure Statement(s) (PTO/SB/08) 5)  Notice of Informal Patent Application  
Paper No(s)/Mail Date. \_\_\_\_.  
6)  Other: \_\_\_\_.

## DETAILED ACTION

1. This Election/Restriction action is in response to Applicant's application filed 11 December 2001. Claims 11-36 are being reviewed. Claims 1-10 were cancelled in a Preliminary Amendment filed 23 April 2003. Claims 11, 17, 31 and 34 are independent claims. In view of Applicant's claims, the election to one of the following inventions is deemed necessary. The restrictions cited are as stated below:

### *Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-30 and 34-36 are drawn to a method and system for generating and outputting a schedule of tasks for a project, where tasks may have associated resources utilized to perform the task. The method includes a:
  - i. Load leveler system
  - ii. Cost estimator subsystem
  - iii. Cost minimizer
  - iv. Task windows.
- II. Claims 31-34 are drawn to a method for optimizing a location of a task in a schedule. The method includes:
  - v. Start times
  - vi. Task locations.

3. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, the subcombinations have separate utility such as:

- I. generating and outputting a schedule of tasks for a project.
- II. optimizing a location of a task in a schedule.

See MPEP § 806.05(d).

4. The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5. The independent claims in each Group I and II recite limitations that are not found together in a common independent claim of the other group, thus it is evidence that Applicant believes a distinct invention combination lies within each set of independent claims. Also, dependent claims then append a multiple of distinct inventive concepts for which Applicant's submission is evidence that Applicant believes each supports a distinct reason for invention. See MPEP § 806.05(d).

6. As the requirement for restriction among the amended claims is complex, no telephone call was made to the attorney of record for the restriction requirement. MPEP 812.01 (R-3).

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different concepts, restriction for examination purposes as indicated is proper. Applicant is advised that the response to this requirement to be complete must include an election of one of the inventions, I or II, to be examined even though the requirement be traversed (37 C.F.R. § 1.143).

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

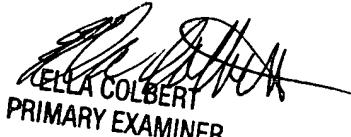
9. A shortened statutory period for response to this action is set to expire 1 (one) month or 30 (thirty) days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn Greimel whose telephone number is (571) 272-3734. The examiner can normally be reached Monday - Friday 8:30 AM - 4:30 PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached at (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jocelyn Greimel  
Examiner, Art Unit 3693  
November 14, 2006



ELLA COLBERT  
PRIMARY EXAMINER